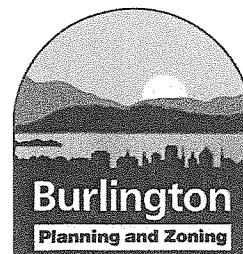


Department of Planning and Zoning

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Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7142 (TTY)

David White, AICP, Director
Ken Lerner, Assistant Director
Sandrine Thibault, AICP, Comprehensive Planner
Jay Appleton, GIS Manager
Scott Gustin, AICP, Senior Planner
Mary O'Neil, AICP, Senior Planner
Nic Anderson, Zoning Clerk
Elsie Tillotson, Department Secretary



TO: Development Review Board
FROM: Scott Gustin
DATE: March 6, 2013
RE: 13-0733PD; 179 Elmwood Avenue

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RM Ward: 3

Owner/Applicant: Offenhartz, Inc.

Request: Amendment to ZP#08-384PD to remove condition #5 (owner occupancy requirement)

Applicable Regulations:

Appendix A – Use Table – All Zoning Districts

Background Information:

The applicant is seeking approval to remove a condition requiring partial owner occupancy associated with the March 11, 2008 approval of a 9-unit residential development (zoning permit #08-384PD). No development is included in this proposal.

Previous zoning actions for this property are listed below.

- 3/11/08, Approval of combined preliminary/final plat for 9-unit PRD and associated site and building modifications. To legitimize existing (but un-permitted) 9 units. Also, convert from apartments to condos.
- 6/13/85, Approval to demolish garage and construct single apartment (the 7th unit) in its place
- 10/8/83, Approval to replace existing garage with new garage
- 1/7/80, Approval to construct rear addition
- 7/5/77, Approval to install a split rail fence
- 1/7/76, Approval to convert from 2 units to 6 units

Recommendation: Consent approval as per, and subject to, the following findings and conditions:

I. Findings

Appendix A – Use Table – All Zoning Districts

The 9-unit PRD approved on the subject property was reviewed under the 1994 Zoning Ordinance. That ordinance made a distinction between rental and owner-occupied residential units. As part of the DRB's review of the project, discussion touched on the possibility of providing a mix of

owner-occupied and rental dwelling units. The resultant DRB decision to approve the project included condition #5 that read:

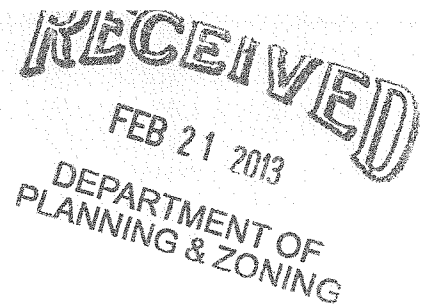
5. Five (5) of the nine (9) units shall be owner-occupied. This provision shall be incorporated into the homeowners' association covenants but does not have to be irrevocable.

Shortly after receiving approval, the housing market essentially collapsed, and financing for condominiums became virtually impossible. As a result, all of the dwelling units are rental. The applicant is now requesting relief from condition 5. This request is reviewed under the Comprehensive Development Ordinance which makes no distinction between rental and owner-occupied dwelling units either for use or parking requirements. In effect, under the CDO, condition 5 is moot. **(Affirmative finding)**

II. Conditions of Approval

1. Except as specifically modified in this approval, all conditions of 08-384PD shall remain in effect.
2. Standard permit conditions 1-15.

TO: Development Review Board
Planning & Zoning Staff
FROM: Offenhartz, Inc.
RE: Request for Amendment to ZP# 08-384PD
179 Elmwood Avenue
DATE: February 21, 2013



Offenhartz, Inc. (the "Applicant") seeks an amendment to ZP# 08-384PD due to a significant change in circumstances over which it had no control.

Background

Offenhartz, Inc. presented this project as a 9-unit PRD in order to legitimize 9 long-existing, residential, rental units at 179 Elmwood Avenue that exceeded the allowable density of 7 units. Applicant's plan at that time was to convert the rental units to owner-occupied condominium units at a sale price that was likely to make purchase attractive to a number of the then current tenants. Though inclusionary zoning was not implicated by such preservation of 9 residential units, the planned sale prices were also likely to meet inclusionary standards. The condominium conversion plans and the inclusionary zoning-level sale prices were incorporated into the permit and its conditions.

The Applicant initially entered a contract to purchase 179 Elmwood Avenue in May of 2007, and applied for the existing permit in November of 2007. The permit was granted in March of 2008 and the Applicant closed on the purchase in April of 2008. During this same period, the financial industry, particularly the home mortgage segment of the industry, began to enter into crisis.

Amendment Request

Lending standards have since tightened to the extent that both condominium units and the likely purchasers of condominium units at 179 Elmwood Avenue must meet higher underwriting standards:

- Local lenders that sell their mortgage loans on the secondary market will not accept condominium units as security for mortgage loans until at least 70% of all units are either sold or under contract. The local lender that does not sell its mortgages on the secondary market uses similar standards. As such, institutional mortgage loans would not be available for purchase of units at 179 Elmwood Avenue unless contracts could be entered for 6 or 7 of the units at the same time.

- Lenders' credit standards and down payment requirements have tightened to the extent that individuals and families in the market for the units that would have been offered at 179 Elmwood Avenue are having much more difficulty qualifying for mortgage loans.

These two factors combined make it infeasible to convert 179 Elmwood Avenue into condominiums.

Applicant has satisfied all permit conditions in a timely manner except #3, requiring inclusionary housing, and #5, requiring that five of the nine units remain owner occupied. Given the change in the marketplace caused by the financial crisis, the Applicant has been forced to revise its plans, and to instead continue to offer 9 rental units on the property. As such, Offenhartz, Inc. respectfully requests that it be relieved entirely from the requirements of condition #5. Applicant accepts the requirements of condition #3 and agrees to designate one unit as inclusionary in accordance with Article 14 of the Zoning Ordinance.

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Burlington Development Review Board

Minutes/Findings of Fact
March 11, 2008

In RE: 08-384PD; 179 Elmwood Ave. (Ward 3, RM) (Tax Lot No. 044-3-007-000)

Owner/Applicant: Sweet Apple Realty / Offenhertz, Inc.

Request: Combined preliminary/final plat review of 9-unit PRD and associated site and building modifications. To legitimize existing (but un-permitted) 9 units. Also, convert from apartments to condos.

Members Present:

Austin Hart
Eric Miller
Glenn Jarrett
Michael Long
Kevin Worden
Eleanor Briggs Kenworthy
Brad Rabinowitz

Evidence Presented:

The Board examined the materials submitted in support of this request.

I. FINDINGS

Background Information:

The applicant is seeking approval through the PRD process to legitimize nine existing but un-permitted dwelling units. Seven were permitted in two detached structures. Minimal new development work is included in this proposal. Development proposed includes paving and delineating the parking area, replacing and upgrading windows in the historic brick building, upgrading the entryways to each building, and revamping the landscaping.

The Design Advisory Board reviewed this project December 11, 2007, and, in a split 3-2 decision, recommended approval subject to the following conditions:

1. The landscaping plan should be revised to keep the existing cedar by the front corner of the brick building and to reposition the proposed pear trees to flank the driveway entrance on either side.
2. The site plan should be revised to incorporate concrete pavers at the entries to buildings 1, 2, and 3 (except for the front door of building 1).
3. The ladder on the north façade should be painted to match the brick color of the building.
4. All of the floodlights should be removed and replaced with compliant lighting fixtures.

Discussion focused primarily on the degree of work proposed for the historic brick building. Some on the Board felt that a comprehensive restoration of the building was warranted, given the applicant's request as a PRD. Others declined to view the project under the PRD standards in Article 11, as the DAB's jurisdiction is under Article 6. Ultimately, the majority of the DAB felt that the proposed work was acceptable, but declined to address whether or not it warranted approval as a PRD. The applicant has submitted revised plans to address all of the DAB's recommendations as noted in the following findings.

Previous zoning actions for this property are listed below.

- 6/13/85, Approval to demolish garage and construct single apartment (the 7th unit) in its place
- 10/8/83, Approval to replace existing garage with new garage
- 1/7/80, Approval to construct rear addition
- 7/5/77, Approval to install a split rail fence
- 1/7/76, Approval to convert from 2 units to 6 units

In a related case, in the late 1980's the buyer of this property successfully sued the seller for representing the property as a 9 unit development. The court recognized 7 units and the seller reimbursed the buyer the difference in value. It appears however that the development continued to be used for 9 units despite this determination.

Article 5: Use, Density and Dimensional Requirements

Section 5.1.4 Permitted Uses:

The property is located in the RM zone. Multi-unit residential structures are a permitted use. The existing 9 units exceed the maximum permissible density of 5 units (20 units/acre on 0.27 acre property) under the regulations applicable to this request. In 1985, six units existed onsite in the brick building and rear addition. Permit #85-245 was issued to demolish a detached garage and construct a single 2-story apartment in its place. Rather than containing one unit as permitted, three units were installed. The end result was 9 units, whereas only 7 were permitted under the regulations in effect at that time. Today, the only way that 9 units may be allowed on this property is by way of modifying the density limits per Sec. 11.1.4, *Modification of Regulations*, of Article 11, Planned Residential Development. As noted later in these findings, the criteria of Article 11 have been sufficiently addressed. **(Affirmative finding)**

Section 5.3 Dimensional Regulations:

Setbacks:

Setbacks remain unchanged. **(Not applicable)**

Height:

Building height will remain unchanged. **(Not applicable)**

Lot Coverage:

Lot coverage is nonconforming at 64% but will remain unchanged. **(Not applicable)**

Article 6: Design Review

(a) Relate development to its environment:

The subject property is located in a largely residential, medium density neighborhood. Buildings are in the 2 – 3 story range with a predominance of Queen Anne and Greek Revival. Many are historic or eligible for historic listing, including the brick building on the subject property. The brick building is the centerpiece of the property with the two more recent structures placed behind this original building. Proposed renovations to the brick building include replacing the windows and reconstructing the side entry porch. The windows presently in place are not original. The replacement units are wooden, 1-over-1, double hung units. No historic documentation has been found to suggest the original configuration of the windows. Lacking that, the proposed double hung wooden units are acceptable. The side entry porch is in poor condition and will be replaced. The replacement includes a shingled gable roof, wooden posts and railings with composite stairs. The front entry has deteriorated from its original condition and must be restored to its original condition as part of this PRD.

The rear addition and detached rear building are unremarkable vinyl clad structures. Proposed changes are minimal and include replacing the entry porches with upgraded wooden materials and installing a new covered entry to the rear building.

The proposed changes are generally acceptable and provide some improvement to existing conditions. **(Affirmative finding as conditioned)**

(b) Preserve the landscape:

Existing landscaping has received little or no attention and is overgrown and unkempt. Much of the existing front yard landscaping will be removed and replaced. As recommended by the DAB, the existing cedars by the brick building doorways will be retained and pruned. However, the DRB finds that the front cedar may be removed as shown on the applicant's original landscape plan. New landscaping will provide limited screening of the parking lot from the road. The proposed pear trees have been placed symmetrically as recommended by the DAB. **(Affirmative finding as conditioned)**

(c) Provide open space:

No public open space is included in this proposal, and lot coverage will remain unchanged. **(Affirmative finding)**

(d) Provide efficient and effective circulation:

The existing compacted dirt and gravel parking lot will be reconstructed and paved. The parking spaces should be striped. **(Affirmative finding)**

(e) Provide for nature's events:

Stormwater dynamics will remain unchanged. As no excavation is proposed, construction site sedimentation should not be problematic. There is sufficient room for snow removal. All building doorways are sheltered, except for the front door to the brick building. **(Affirmative finding)**

(f) Make advertising features understandable:

No advertising features are included in this proposal. **(Not applicable)**

(g) Integrate special features with the design:

As recommended by the DAB, the existing flood lights will be removed and replaced with cut-off wallpack fixtures. The proposed fixture must use metal halide or florescent bulbs. A detailed site

lighting plan must be submitted that depicts compliance with the standards in the Outdoor Lighting Manual for Vermont Municipalities.

The above-ground utility lines will remain above ground.

The existing ladder on the northern elevation of the brick building will be painted to match the color of the brick, per the DAB's recommendation. **(Affirmative finding as conditioned)**

(h) Make spaces secure and safe:

The applicant has been in contact with the City Fire Marshall to address his concerns with the property. The Fire Marshall has accepted the project subject to its conformance with all applicable sections of the IBC, VDFS, FNPA, and BCOs Codes and Standards. **(Affirmative finding as conditioned)**

(i) Protect Burlington's heritage:

The brick building was constructed in 1851 and is included on the state historic register. The rear addition and detached structure are about 20 years old and are not historic. The proposed renovations, while not comprehensive, are generally an improvement. This proposal will not adversely impact Burlington's heritage. **(Affirmative finding)**

(j) Consider the microclimate:

The proposed work is not expected to have any adverse impacts on the microclimate. **(Affirmative finding)**

Article 7: Site Plan

(a) Adequacy of Traffic Access. Curb cuts should be so arranged and limited in number as to reduce congestion and improve traffic safety. Proper sight triangles and sufficient turnarounds for vehicles should be provided to reduce the potential for accidents at points of egress; Traffic access will remain unchanged. Existing conditions are adequate to serve the dwelling units. **(Affirmative finding)**

(b) Adequacy of Traffic Circulation and Parking. There should be sufficient parking as required in Article 10 laid out in a manner to provide ease in maneuvering of vehicles and so as not to be detrimental to the surrounding properties or to create an undesirable visual effect from the street. Sufficient area for loading and unloading may be required if the need for such loading zone is found to be necessary;

Parking demand is addressed under the Article 10, *Parking*, section of these findings. The parking layout will be improved as a result of paving and striping what is currently a dirt/gravel parking area. No loading area is necessary. **(Affirmative finding)**

(c) Adequacy of Landscaping and Screening. There shall be a sufficient amount of landscaping and screening, as may be reasonably determined by the development review board, to insure protection of and to enhance the quality of the project in question and the adjacent properties; Some new screening of the parking area will be provided. **(Affirmative finding if conditioned)**

(d) Adequacy of Protecting the Use of Renewable Energy Resources: Where appropriate and feasible, the site plan shall be so designed as to not unreasonably deter the actual or potential use

by the subject property or adjacent properties of energy available for collection or conversion from direct sunlight, wind, running water, or organically derived fuels.

No information has been provided with respect to the use of alternative energies; however, nothing in the application indicates that the proposed development would unreasonably deter the actual or potential use by the subject property or adjacent properties of energy available for collection or conversion from direct sunlight, wind, running water, or organically derived fuels. **(Affirmative finding)**

Article 10: Parking

The parking requirement for the 9 residential units is 18 spaces (2 spaces per unit). Only 10 spaces are provided. In light of the property's reasonable proximity to bus routes and downtown, an 8 space parking waiver may be warranted. **(Affirmative finding as conditioned)**

Article 11: Planned Residential Development

(a) Lot coverage requirements of the district shall be met;

As noted previously, the existing 64% lot coverage exceeds the maximum permissible 40% in the RM zone; however, the lot coverage was approved as part of permit #85-245 and is therefore legitimately nonconforming. **(Affirmative finding)**

(b) The minimum setbacks required for the district shall apply to the periphery of the property;
Setbacks will remain unchanged. **(Not applicable)**

(c) The minimum parcel size shall be met if the project is located in a RL or WRL district;
This property is located in the RM zone. **(Not applicable)**

(d) The project shall be subject to design review and site plan review;
Design review and site plan review criteria are addressed under the Articles 6 and 7 in these findings.

(e) The project shall meet the requirements of Burlington's Subdivision Regulations;
The subdivision regulations are addressed under Chapter 28 in these findings.

(f) All other zoning requirements of the district, except those specifically deemed not applicable by the Administrative Officer, shall be met;
A parking waiver is needed and can be reasonably granted. The density in excess of that typically allowed may be granted under the provisions of this Article. **(Affirmative finding as conditioned)**

(g) Open space or common land shall be assured and maintained in accordance with the conditions as prescribed by the DRB;
Part of this proposal is the conversion of apartments into condominiums. The resulting homeowners' association will maintain common lands. **(Affirmative finding)**

(h) The development plan shall specify reasonable periods within which development of each phase of the PRD may be started and shall be completed. Deviation from the required amount of usable open space per dwelling unit may be allowed provided such deviation shall be provided for in other sections of the PRD;

The limited construction associated with this proposal would be implemented in one phase.
(Affirmative finding)

(i) The intent as defined in Sec. 11.1.1 is met in a way not detrimental to the city's interests; and
There is little new development associated with this proposal. The structures and units have been in place for years and have not adversely impacted the neighborhood. The density bonus associated with this proposal simply recognizes the units in place and does not adversely affect the city's interests. **(Affirmative finding)**

(j) The proposed development shall be consistent with the municipal development plan.
The project provides some renovation of an historic structure consistent with historic preservation outlined in Section IV, Historic Preservation. The dwelling units are to be affordable as encouraged in Section IX, Housing Plan. **(Affirmative finding)**

Article 14: Inclusionary Housing

The application states that the dwelling units will be affordable; however, details are lacking. A plan for providing the required affordable housing units must be worked out with CEDO, and a Certificate of Inclusionary Housing Compliance must be obtained from the city's Housing Trust Fund. **(Affirmative finding as conditioned)**

Chapter 28: Subdivision Ordinance

Section 28-7. General and specific review criteria

(a) General review criteria:

(1) Not result in undue water, air, or noise pollution;

The project will have no appreciable impact on water, air, or noise pollution. **(Affirmative finding)**

(2) Have sufficient water available for its needs;

The project is currently served by municipal water. No change in demand is entailed. **(Affirmative finding)**

(3) Not unreasonably burden the city's present or future water supply or distribution system;

As noted above, the units are currently served by the municipal water system, and no change in demand is proposed. **(Affirmative finding)**

(4) Not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;

Very little actual construction is included in this proposal. Little, if any, excavation will be required to pave the parking area. Soil erosion is not expected to be problematic. **(Affirmative finding)**

(5) Not cause unreasonable congestion or unsafe conditions on highways, streets, waterways, railways, bikeways, pedestrian pathways or other means of transportation, existing or proposed;

No significant additional traffic will be generated; traffic associated with these two additional units would be minimal. **(Affirmative finding)**

(6) Not cause an unreasonable burden on the city's ability to provide educational services;

This project will generate little, if any, impacts on the city's school system. **(Affirmative finding)**

(7) Not place an unreasonable burden on the city's ability to provide municipal services;

As noted previously, the two "proposed" units will have little, if any, appreciable impacts on municipal services. Ability to serve letters have been obtained from Fire, Police, School, Electric, Parks & Recreation, and Public Works Departments as required. **(Affirmative finding)**

(8) Not have an undue adverse effect on rare, irreplaceable or significant natural areas, historic or archaeological sites, nor on the scenic or natural beauty of the area or any part of the city;

The subject property contains no rare, irreplaceable, or significant natural areas, nor does it contain any known archaeological sites. There is an historic building onsite; however, it will not be adversely impacted by the proposal and will be improved with building and landscape work.

(Affirmative finding)

(9) Not have an undue adverse effect on the city's present or future growth patterns nor on the city's fiscal ability to accommodate such growth, nor on the city's investment in public services and facilities;

The two proposed units are located in a residential zone and will have negligible, if any, impacts on the city's growth patterns **(Affirmative finding)**

(10) Be in substantial conformance with the city's municipal development plan;

As noted under Article 11 of these findings, the project is in reasonable conformity with the MDP. **(Affirmative finding)**

(11) Not have an undue adverse impact on the present or projected housing needs of the city in terms of amount, type, affordability and location;

This project will not have an undue adverse impact on the present or projected housing needs of the city. It simply recognizes the exiting dwelling units. **(Affirmative finding)**

(12) Not have an undue adverse impact on the present or projected park and recreation needs of the city.

Little, if any, impacts will be felt by the park and recreation facilities of the city. **(Affirmative finding)**

(b) Specific review criteria:

(1) Monuments: A surveyed property plat and mylar have been submitted as required.

(Affirmative finding)

(2) Lots and blocks: No new lots or blocks are included in this proposal. **(Not applicable)**

(3-4) Subsurface improvements: Items such as stormwater, water, and sewer infrastructure have been addressed previously in these findings.

(5) Easements: No easements affect the property, as depicted in the property plat. **(Affirmative finding)**

(6) Trees: At least 3 trees per residential unit must be retained and/or planted onsite. The 9 residential units would require 27 trees. No tree inventory has been provided; however, site visits and orthophotos suggest that there are less than 27 trees onsite. Given the very limited open space available on the property, a waiver of this criterion per Sec. 28-11, *Waivers*, of the Subdivision Ordinance is appropriate. This waiver is subject to City Council approval. **(Affirmative finding)**

(7) Street names and house numbers: Street names and house numbers already exist and will remain unchanged. **(Affirmative finding)**

(8) Land for park and recreational purposes: As the subject property is less than 3 acres in size, this criterion does not apply. **(Not applicable)**

(9) Preservation of natural features and trees: There are no significant natural features to preserve. No existing trees will be removed. **(Affirmative finding)**

(10) Performance bond: No public infrastructure will be constructed as part of this development. Therefore, there is no need to establish a performance bond. **(Not applicable)**

II. MINUTES

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

III. MOTION

Motion: Austin Hart

I move that the Board grant combined preliminary and final plat approval for a 9-unit PRD and associated site and building modifications and conversion from apartments to condos, located at 179 Elmwood Avenue in the RM zone in accordance with Articles 5, 6, 7, 10, 11, 14 and Chapter 28. Approval is subject to the following conditions:

1. **Within 180 days of the date of final approval**, the subdivision plat shall be filed with the City Clerk per Section 28-6 (i) (1) of the Subdivision Regulations. Failure to do so shall render void the final plat approval.
2. **Prior to release of the zoning permit**, revised plans shall be submitted, subject to staff review and approval. Revised plans shall depict:
 - a) Removal of the front cedar;
 - b) Trash enclosure (not dumpster) at the rear of the parking area;
 - c) Back porch of the rear addition to the brick building shall be modified for bike storage; and
 - d) Exterior lighting details in compliance with Outdoor Lighting Manual for Vermont Municipalities.
3. Inclusionary housing shall be provided in accordance with Article 14 of the Zoning Ordinance, and a Certificate of Inclusionary Housing Compliance shall be obtained from the city's Housing Trust Fund.
4. The front entrance of the brick building shall be restored, including the glass sidelights and the glass window in the door.

5. Five (5) of the nine (9) units shall be owner-occupied. This provision shall be incorporated into the homeowners' association covenants but does not have to be irrevocable.
6. Overhead utility lines may remain as is (unburied).
7. An 8-space parking waiver is included in this approval.
8. The project shall comply with Burlington's current energy efficiency standards and with Burlington's current ingress and egress requirements as established by Burlington Electric Department and Burlington Public Works, respectively.
9. Standard permit conditions 1 – 18.

Seconded: Kevin Worden

Vote: 5-0-2, motion carried (EK & GJ abstained)

Dated at Burlington, VT, this 10th day of March, 2008.

Respectfully Submitted,



Austin Hart, Development Review Board Chair

Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Environmental Court. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Environmental Court. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.